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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/756,453	01/08/2001	Richard Bolling	ADO 0069 PA	5555

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EXAMINER

RIBAR, TRAVIS B

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 02/28/2003

*B*

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/756,453

Applicant(s)

BOLLING ET AL.

Examiner

Travis B Ribar

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-19 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-19 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The applicant's amendment filed January 3, 2003 overcomes the examiner's previous rejections found in paragraphs 11-13, made under this heading, of the office action dated September 29, 2002.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the melting of the heat activated expandable sealant, does not reasonably provide enablement for the melting of the flow control agent. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. Specifically, there is no mention in the specification that the flow control agent may or should flow in the temperature range the applicant claims.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1711

Paragraph 10 of the office action dated September 29, 2002 contains the text of this rejection.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 15, 18-19, and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al.

Paragraph 15 of the office action dated September 29, 2002 contains support for the rejection of claims 15 and 18-19 under this heading. Regarding the newly added limitation that the flow control agent and the sealant melt upon heating, the present language of the claim does not necessitate that the layers flow during the application of the sealant to a gap—the claim only states that both layers flow upon heating to a sufficient temperature. Therefore, the claim necessitates that both layers of the present invention be thermoplastic. Johnson et al. discloses that a second melt-flowable (thermoplastic) layer is present in their invention (column 15, lines 39-40) and can have melt flow properties equivalent to those the applicant claims (column 17, lines 51-57). Since the layers are laminated to each other, the layer with the lower flow rate will inherently behave as a flow control layer.

Johnson et al. discloses that the flow control layer is a film (column 17, lines 51-57), meeting claim 23, and since no solvent is present and since it coats the first melt-

Art Unit: 1711

flowable layer in the reference, it meets the definition of a dry coating and meets the limitations of claim 24.

Newly added claim 25 contains the same restrictions as newly amended claim 15 (discussed above), with the added limitation that the combination of layers is adapted to seal gaps up to 100 mm in width. This range includes gaps much smaller than 100 mm, and the reference teaches using the composition to seal automotive gaps such as washer gaps (column 20, lines 40-52), which are smaller than 100 mm. The reference therefore meets all restrictions of claim 25.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. in view of Bien et al.

Paragraph 17 of the office action dated September 29, 2002 contains the text of this rejection.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. in view of Stokes.

Johnson et al. discloses the multilayer structure the applicant claims in claim 15 and also includes the limitation that there may be a web or scrim present in the multilayer structure in order to control the flow of the sealant, but does not include the

Art Unit: 1711

limitation that the web or scrim should be made from polyvinyl acetate, as the applicant claims in claim 17. Stokes claims a web that has high tensile strength, which comprises a blend of polymers, including pure polyvinyl acetate, as the newly amended claim defines.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the polyvinyl acetate web in Stokes in the multilayer structure in Johnson et al. The motivation for doing so would be to provide a high tensile strength support and flow control agent. Therefore it would have been obvious to combine Stokes with Johnson et al. to obtain the invention as specified in claim 17.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. in view of Trainor.

Johnson et al. discloses the multilayer structure of claim 15, but does not teach that a blowing agent can be used in the sealant. Adding a blowing agent to a sealant is a practice is well known in the art, as it forms a sealant foam that has advantageous sealing properties over a non-foamed sealant. Trainor discloses such a practice (see the abstract).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a blowing agent in the sealant in Johnson et al. The motivation for doing so would be to create a foamed sealant. Therefore it would have been obvious to combine the teaching in Trainor with Johnson et al. to obtain the invention as specified in claim 22.

***Election/Restrictions***

12. The applicant's election of group III, claims 15-19 is acknowledged along with the subsequent cancellation of all nonelected claims.

***Response to Arguments***

13. The applicant argues that the layer in Johnson et al. that the examiner deems meets the definition of flow control agent does not meet the definition because the layer does not flow. However, the applicant has not defined or claimed the flow control agent as flowing during the application of the sealant, so such a property cannot be relied upon to overcome the rejection.

14. The applicant also argues the difference between controlling flow and restricting flow (page 4 of the response). There is no definition on the record to indicate that the applicant's definition of "controlling" is different from the definition of "restricting." Further, though the applicant is allowed to be their own lexicographer, they may not define terms to have meanings repugnant to their usual meanings. See *In re Hill*, 161 F.2d 367, 73.

15. The applicant also argues that "modified polyethylene" in claim 16 is adequately defined. The examiner disagrees, as no definition is found in the specification and there is no indication of how the polyethylene is modified.

16. The applicant's other arguments are rendered moot based on the new grounds of rejection.

***Conclusion***

17. The examiner notes that the applicant appears to be trying to claim an invention including a melting flow control agent, though the current specification does not support such a claim. Such a structure was not found during a search for the presently claimed invention.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Art Unit: 1711


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis B Ribar whose telephone number is (703) 305-3140. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Travis B Ribar  
Examiner  
Art Unit 1711

TBR  
February 14, 2003

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700